ALICIA ABOOL-ALCAZAREN, AS FORCED HEIR OF THE LATE JOSE ABOOL, IN REPRESENTATION OF THE LATE ADRIANA ANISCO AND MARIETA BALDERAS GARINGALAO, AS FORCED HEIR OF THE LATE PATRIA AN...

Ponente: SALANDANAN-MANAHAN, J.

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SALANDANAN-MANAHAN, J.:

Before Us is an Appeal assailing the Decision[1] dated July 30, 2007 of the Regional Trial Court (RTC), Branch 14, Roxas City, in Civil Case No. V -6823 for Annulment of the Agreement of Adjudication of Lot 1277-B. The dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing testimonial and documentary evidences, and in the light of relevant decisions of the Supreme Court cited herein, the court renders judgment as follows:
>
> a) Declaring the public auction sale conducted on 30 September 1993 as VOID for lack of notice to the registered owners as indicated in the Transfer Certificate of Title No. T-28999;
>
> b) Declaring the Agreement of Adjudication of Lot No. 1277-B, bearing Doc. No. 402, page 42, Book LXXXXIV, Series of 1995 of the Notarial Register of Notary Public, Albert I. Potato as NULL AND VOID;
>
> c) Declaring Transfer Certificate of Titles for the subdivided lots (Lot No. 1277-B-1 to Lot No. 1277-B-8) as NULL AND VOID;
>
> d) Ordering the defendants, jointly and severally, to pay the plaintiffs the sums of P50,000 as moral damages, P20,000 as exemplary damages; P20,000 as exemplary damages; and P20,000 as attorney's fees for the plaintiffs' lawyer.
>
> Furnish copies of this decision the Office of the City Treasurer, the City Assessor, the Register of Deeds for Roxas City, the plaintiffs and counsel, and the defendants and their counsel.
>
> SO ORDERED."

THE ANTECEDENT FACTS

The facts as culled from the case record and from testimonies of the witnesses of both parties are as follows:

Lot 1277 - B was a portion of Lot 1277, a titled property previously covered by Transfer Certificate of Title No. T-28999 with an area of 7,959 square meters, more or less, and co-owned by the following people:[2]

- Celestiano Abella, married to Clemencia Estrella – 1/5 share
- Adriana Anisco, widow – 1/5 share
- Pedro Anisco, married to Francisca Arceo, 1/25 share.
- Felipe Anisco, married to Nicolasa Arieta - 1/25 share.

- Valeriano Anisco, married to Concordia Abella - 1/25 share.

- Natividad Anisco, married to Remigio Acer – 1/25 share.

- Celestina Abela, married to Arcadia Acer - 1/15 share.

- Gabino Abella, married to Rufina Aropeo – 1/15 share.

- Isidoro Abella, married to Aniceta Anarto, 1/15 share.

- Donato Abella, married to Pasuala Gallardo – 1/15 share.

- Alfonso Acielo, married to Romana Bosto – 1/15 share

- Manuela Acielo, wife of Gregorio Dacuya – 1/15 share.

The real estate tax for Lot 12777 – B was not paid for a considerable length of time that the City of Roxas through its City Treasurer's Office decided to sell it together with other delinquent properties in a public auction sale set on September 30, 1993.

Notices of public auction sale were supposedly sent to the declared owners of the pieces of delinquent property and were also published in a newspaper of general circulation.

On the scheduled day of the execution sale, defendant-appellant Walter Anisco, for his own interest and in representation of his co-defendants-appellants, made a bid to acquire the subject lot and won. A Certificate of Sale of Delinquent Real Property was executed in his favor. When the redemption period lapsed without the owner/taxpayer being able to redeem the lot, the City of Roxas through the Office of the City Treasurer executed a Final Bill of Sale in favor of defendant Walter Anisco.

Since Walter Anisco's bid for the lot was not only for himself but was also for the interest of seven other people, he prepared a subdivision plan and had the subject property subdivided into eight (8) parts. Thereafter, Walter Anisco and the other defendants-appellants executed an agreement where they agreed to partition among themselves Lot 1277- B in accordance with their respective contributions in the purchase price.[3]

With the subdivision plan and the partition agreement approved, Transfer Certificate of Title No. T-28999 for Lot 1277-B was cancelled and eight (8) new titles with their corresponding new tax declarations were issued.

Upon cognition of the said agreement, and when they were notified that they were to be evicted from their homes, plaintiffs- appellees filed a Complaint for Annulment of the Agreement of Adjudication of Lot 1277-B.

Per the Complaint plaintiffs-appellees prayed for the nullification of the Adjudication Agreement inasmuch as they were supposedly denied of their share of the lot in issue. According to plaintiffs-appellees, the new Transfer Certificate of Titles issued based on the Adjudication Agreement “NOT ALL THE FORCED HEIRS of Adriana Anisco, Pedro Anisco and Gabino Abella were represented as assignees-adjudicatees” of the said agreement.

To bolster their posture, plaintiffs-appellees presented Cesar Florida to testify that he had known the owners and occupants of Lot 1277-B as he lived opposite it for seventy-three (73) years. He knew that the lot was previously owned by twelve (12) people, and personally knew three (3) of them, namely; Pedro Anisco, Felipe Anisco and Briliano Anisco. He also testified that he cannot remember any incident that disturbed the peaceful possession of the lot.[4]

Plaintiff-appellee Alicia Abool Alcazaren, one of herein plaintiffs-appellees and one of Lot 1277-B's possessors, was also presented and testified that her great-great grandmother, Adriana Anisco, was one of the co-owners of the lot in litigation. She alleged that her father, Juan Abool, son of Antonia Abool, who was the daughter of

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Adriana Anisco, was not given his alleged share of the lot. She further averred that when herein defendants-appellants agreed to partition the lot, she was not consulted. She also was not aware that the lot in issue was sold in a public auction for failure to pay the required real estate tax. When asked, she cannot remember her ascendants ever paying real property tax on the lot where they had their house built. She also did not ever pay real property taxes on the said lot. She asked for moral damages and attorney's fees due to sleepless nights brought by the ejectment case filed upon her.[5]

The last witness for the plaintiffs was plaintiff-appellee Marieta Balderas Garingalao. She is the granddaughter of Pedro Anisco, one of the original owners of Lot 1277-B. She recounted that as far as she could remember, nobody disturbed the possession of her grandfather and mother during their lifetimes. Like her co-witness and co-plaintiff, Marieta Balderas Garingalao cannot also recall if her grandfather and mother ever paid realty taxes on the lot they were occupying. She was also not paying the taxes due for the lot since she did not know where the title is and who are the declared owners.[6]

For their part, defendants-appellants presented four (4) witnesses to support their arguments. Their first witness was Ricarda Alcones, the Local Treasury Operation Officer from the City Treasurer's Office of Roxas City, who narrated the process which led to the auction sale of the subject lot. She recounted that sometime in 1993, Lot 1277-B was sold in a public auction conducted by their office for non-payment of taxes. She claimed that their office sent a notice of delinquency sale to Felipe Anisco, Sr., the name found in the Tax Declaration furnished by the City Assessor. The notice of delinquency was received and signed by a certain Meriam Anisco. After the first delinquency notice was sent, it was followed by a final demand dated September 1, 1993, but as it also went unheeded. The auction sale on September 30, 1993pushed through, where Walter Anisco was the highest bidder for Lot 1277-B and a document of sale of delinquent property was issued to him. When the one (1) year redemption period expired without anyone redeeming the property, the City Treasurer's Office issued him a Final Deed of Sale.[7]

Defendants-appellants next presented Robinisto Castro, one of the named defendants. He testified that he and his other co- owners bought portions of Lot 1277-B from Walter Anisco who bought the lot from the public auction sale. After they bought the property from Walter Anisco, they caused its subdivision and titles were issued on their names.[8]

The third witness of defendants-appellants is Walter Anisco. He admitted in open court that he knew Lot 1277-B and its previous owners who were his ancestors. He claimed that when he learned of the auction sale, he requested the city government to call them (the heirs) so they may attend it. He also averred that plaintiff-appellees were aware of the auction sale for he personally informed them, but they did not participate in the bidding. When he participated in the bidding, he alleged that the purchase price for Lot 1277-B was the aggregate contributions of all defendants-appellants. After winning the bid of the lot, they agreed to partition it among those who contributed to the purchase price. Their agreement was reflected in a document which they all signed.[9]

The last witness was Gregorio Anisco, also a defendant-appellant in this case and was one of those who contributed to the purchase price of Lot 1277-B in the public auction sale. His version of the facts was that, Walter Anisco, after having bought the lot in question in the auction sale, communicated with Alicia Alcazaren , Marieta Garingalao, and him. When he went to see Walter Anisco, plaintiffs-appellees Alcazaren and Garingalao were present together with other defendants-appellants. Walter Anisco propositioned to them that they were going to divide the purchase price and partition the lot according to their contributions. The witness, as well as the other defendants-appellants present agreed to Walter Anisco's proposal. However, plaintiffs-appellees did not contribute anything.[10]

Plaintiff-appellees also presented a rebuttal witness in the person of Abelardo Cargando who testified that their office conducted the auction sale of Lot 1277-B covered by Tax Declaration No. 0878 in the name of Felipe Anisco. He stated that he did not know that the lot was also owned by other people.[11]

After trial on the merits, the trial court rendered the impugned Decision. The court a quo, declared the public auction sale as null and void for failure to sent notices of delinquency and of the tax sale to the registered owners or their heirs. Aggrieved, defendants-appellants appeal raising the following issues:[12]

> - The Honorable Trial Court erred when it held that the public auction sale conducted by the office of the City Treasurer, Roxas City on September 30, 1993 is void without the City of Roxas being included as an indispensable party defendant
>
> - The Honorable Trial Court erred when it held that the public auction sale conducted on September 30, 1993 is void for lack of notice.
>
> - The Honorable Trial Court erred when it held that the agreement of adjudication of Lot 1277-B was null and void.
>
> - The Honorable Trial Court erred when it held that the Transfer Certificates of Title for the subdivided lots are null and void.
>
> - The Honorable Trial Court erred in awarding damages to plaintiffs.

THE COURT'S RULING
The Appeal is meritorious.

On the first issue.

Defendants-appellants averred that the trial court cannot order for the annulment of the public auction sale firstly because the City of Roxas was not impleaded as a party to this suit.

Section 7, Rule 3 of the Revised Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants.[13] Jurisprudence further holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience.[14] He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[15] Inasmuch as it is the local government unit which was tasked to tax, levy, and sell the delinquent property in a public auction, it is deemed proper that an action assailing such sale should implead the one who caused it.

The power to tax real property lodges with our local government units. No less than the Constitution, specifically Section 5, Article X and R.A. No. 7160 otherwise known as the Local Government Code, empowered our LGUs to collect or levy taxes on real properties belonging within their territorial jurisdiction. Part of this power, after the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on, before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer. Within thirty (30) days after the levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the claim and cost of sale. At any time before the date fixed for the sale, the taxpayer may stay they proceedings by paying the taxes, fees, charges, penalties and interests. If he fails to do so, the sale shall proceed and shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as determined by the local treasurer

conducting the sale and specified in the notice of sale.

As long as the rules and regulations concerning sale at public auction have been complied with, the local treasurer can proceed with the auction sale on real estate with delinquent taxes.

On the second issue:

The defendants-appellants averred that plaintiffs-appellees were not questioning the public auction sale. Upon scrutiny of the Complaint,[16] We found that indeed, it was bereft of any allegation questioning the auction sale of Lot 1277-B. What plaintiffs-appellees categorically prayed in the Complaint were only for the annulment of the agreement of Adjudication, the Transfer Certificate of Titles for the sub-divided lots of 1277-B-1 to 1277-B-8, and for the delivery of plaintiffs-appellants share of Lot 1277-B.

Unless the auction sale will be declared void, defendants-appellants' ownership of the subject lot is valid and existing. Nevertheless, the court cannot nullify the auction sale since it cannot grant more than what is prayed for.[17] The power to grant any relief allowed under the law is, as general rule, delimited by the cardinal principle that it cannot grant anything more than what is asked for because the relief dispensed cannot rise above its source.[18] Jurisprudential jottings on the matter has it that courts cannot grant a relief without first ascertaining the evidence presented in court.[19] Hence, the trial court cannot order for the annulment of the public auction sale inasmuch as it was not alleged in the Complaint.

In Development Bank of the Philippines v. Tecson,[20] this Court expounded that:

> xxx "The raison d'etre in limiting the extent of relief that may be granted is that it cannot be presumed that the defendant would not file an Answer and allow himself to be declared in default had he know that the plaintiff will be accorded a relief greater than or different in kind from that sought in the Complaint. No doubt, the reason behind Section 3(d), Rule 9 of the Rules of Court is to safeguard defendant's right to due process against unforeseen and arbitrarily issued judgment. This, to the mind of the Court, is akin to the very essence of due process. It embodies "the sporting idea of fair play" and forbids the grant of relief on matters where the defendant was not given the opportunity to be heard thereon."

Also procedural and case law doctrines were explicit that issues not raised in the pleadings, are deemed waived or abandoned. [21]

Moreover, granting arguendo that the annulment of the auction sale had been raised in the pleadings or been adjudicated in open court, still the trial court should have not entertained the same inasmuch as the requirements provided in Section 267 of the Local Government Code was not complied with.

Section 267 of the Local Government Code of 1991 provides:

> "Sec. 267. Acting Assailing Validity of Tax Sale.— No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.
>
> Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."

On the third issue:

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Defendants-appellants argued that the court a quo cannot nullify the Agreement of Adjudication inasmuch as they legally acquire the said lot when Walter Anisco won as the highest bidder for the lot in the auction sale. Since the Adjudication Agreement sprung from defendants-appellants winning the bid, it cannot be annulled unless the auction sale is voided.

It is worthy to note that the Agreement of Adjudication was a contract executed by the parties who relied on the validity and legality of the public auction sale. If the public auction sale is voided, all those which derived its efficacy from it will also be nullified.[22]

On the fourth issue.

By virtue of the Final Bill of Sale issued when the redemption period expired, herein defendants-appellants are the recognized co-owners of the lot. As owners thereof, they have the right to have the titles registered in their names. Likewise, the Transfer Certificates of Title for the subdivided lots cannot also be nullified where the auction sale remains valid and effective.

The trial court awarded plaintiffs-appellants the sums of P50,000.00 as moral damages, P20,000 as exemplary damages, and P20,000 as attorney's fees.

The award of moral damages must be anchored on a clear showing that they actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury.[23] Plaintiffs-appellants testimony, however, did not provide specific details of the suffering they allegedly went through. Since an award of moral damages is predicated on a categorical showing by the claimant that it must be disallowed absent any evidence thereon.[24]

Plaintiffs-appellees cannot be awarded exemplary damages either, in the absence of any evidence showing that defendants- appellants acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner as provided in Article 2232 of the Civil Code.

Anent plaintiffs-appellees' prayer for attorney's fees, there was no sufficient basis for the award. There was no bad faith on the part of defendants-appellants to justify the award of attorney's fees.[25]

Article 2208 of the Civil Code, provided the parameters when attorney's fees shall be awarded, to wit:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
>
> (6) In actions for legal support;
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

The award of attorney's fees is the exception rather than the rule and the court must state explicitly the legal reason for such award. As enunciated by the High Court in ABS-CBN Broadcasting Corporation v. Court of Appeals:[26]

> The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.(Emphasis supplied.)

WHEREFORE, premises considered, the Appeal is GRANTED The impugned Decision[27] dated July 30, 2007 of the Regional Trial Court (RTC), Branch 14, Roxas City, in Civil Case No. V -6823 for Annulment of the Agreement of Adjudication of Lot 1277-B is hereby REVERSED and SET ASIDE but without prejudice to plaintiffs-appellees filing of the appropriate action.

SO ORDERED.

Hernando, R.P.L., (Chairperson) and Quijano-Padilla, M.L.C., JJ., concur.

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[1] Penned by RTC Judge Salvador S. Gubaton, Rollo, pp. 54-70; Record, pp. 447-463

[2] Appellant's Brief, Rollo, pp. 29-30; TCT -2899, Records 227-228.

[3] Appellant's Brief, Rollo, pp. 31-32

[4] TSN, Testimony of Cesar Florida, August 4, 1998, Morning Session

[5] TSN, Testimony of Alicia Abool Alcazaren, September 11, 1998

[6] TSN, Testimony of Marieta Balderas Garingalao, September 21, 1998

[7] TSN, Testimony of Ricarda Alcones, January 28, 1999

[8] TSN, Testimony of Robinisto Castro, June 23, 1999

[9] TSN, Testimony of Walter Anisco, July 8, 1999

[10] TSN, Testimony of Gregorio Anisco, July 10, 2000

[11] TSN, Testimony of Abelardo Cargando, June 14, 2000

[12] Appellant's Brief, Rollo, pp. 45-46

[13] Marmo vs. Ancay G.R. No. 182585, November 27, 2009

[14] Moldes v. Villanueva, G.R. No. 161955, August 31, 2005, 468 SCRA 697, 707-708;

[15] Servicewide Specialists, Inc. v. Court of Appeals, 376 Phil. 602, 612 (1999)

[16] Record, pp. 1-7

[17] Steel Corporation of the Philippines vs. Equitable PCI Bank, Inc., G.R. No. 190462 November 17, 2010.

[18] Go vs. Go, G.R. No. 183546 , September 18, 2009 citing Potenciano v. Court of Appeals, 104 Phil. 156, 160 (1958).

[19] Leticia Diona, represented by her Attorney-in-fact, Marcelina Diona v. Romeo Balangue, Sonny Balangue, Reynaldo Balangue, and Esteban Balangue, Jr.; G.R. No. 173559, January 7, 2013.

[20] G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

[21] G.R. No. 174373, October 15, 2007, 536 SCRA 268, 288. See also MCC Industrial Sales Corporation v. Ssangyong Corporation, G.R. No. 170633, October 17, 2007, 536 SCRA 408, 464.

[22] Art. 1390, Civil Code of the Philippines; Cf. First Philippine Holdings Corporation vs. Trans Middle East (Phils) Equitties, Inc., G.R. No. 179505.

[23] Philippine Savings Bank v. Sps. Mañalac, Jr , 496 Phil. 671 (2005), citing Mahinay v. Atty. Velasquez, Jr., 464 Phil. 146 (2004).

[24] Metropolitan Bank and Trust Co. v. Perez, G.R. No. 181842, February 5, 2010, 611 SCRA 740, 746, citing Bank of Commerce v. Sps. San Pablo, G.R. No. 167848, April 27, 2007, 522 SCRA 713, 715.

[25] Development Bank of the Philippines vs. Traverse Development Corporation, et al. G.R. No. 169293, October 5, 2011

[26] 361 Phil. 499, 528 (1999).

[27] Penned by RTC Judge Salvador S. Gubaton, Rollo, pp. 54-70; Record, pp. 447-463

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